



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

**JOHN BEN SHEPPERD  
ATTORNEY GENERAL**

August 16, 1954

Hon. R. A. Barton  
County Attorney  
Calhoun County  
Port Lavaca, Texas

Letter Opinion MS-149  
Re: Local Option Election  
Petition, Justice Precinct  
No. 4, Calhoun County,  
Texas

Dear Sir:

This will acknowledge receipt of your letter of August 9, 1954, in which you ask advice on behalf of the Commissioners' Court of Calhoun County as to the sufficiency of the above mentioned Petition.

According to the certified copy of the first page of said Petition, the issues set out read:

"For Prohibiting the sale of all alcoholic beverages" and

"Against Prohibiting the sale of all alcoholic beverages."

You ask the following three questions in regard to such Petition:

1. Whether or not an election called upon this petition would be a legal election.
2. Whether or not the Court should submit the same as is.
3. Whether or not the Court should call for a new petition in the language of the Statutes.

Prior to the amendment of the Texas Liquor Control Act by the Fifty-third Legislature, the Petition would have been sufficient on either of two grounds: (1) The law prior to 1953 specified the very language used in this Petition; (2) and prior to the 1953 amendment, Sec. 32 of Art. 666, Penal Code, specifically permitted the Commissioners Court to order such an election on its own motion. The latitude thus allowed under such prior law is well illustrated in the case of *Hutson v. Smith, et al.*, 191 S.W. 2d 779 (Gal. C.C.A. 1945).

However, you will note in the 1953 amendment to the Texas Liquor Control Act, Sec. 32 of Art. 666 was so amended as to eliminate the right of the Commissioners Court to order such an election on its own motion and now specifically requires that the election be ordered upon proper petition and further that the local option election be held upon the issue set out in such petition. The same 1953 amendment changed Sec. 40 of Art. 666 of the Penal Code in specifying the particular language in which the issues shall be stated under particular situations and completely eliminated the use of the wording set out in the petition involved in this inquiry. This section specifies the exact wording the Commissioners Court shall use in submitting the issue to the voters and again repeats the necessity of the Commissioners Court acting only after the petition has been filed. Assuming that the sale of all alcoholic beverages has heretofore been legal in the above Precinct, the proper wording of the issues would be;

"For the legal sale of all alcoholic beverages"  
and

"Against the legal sale of all alcoholic beverages"

You will note that such Sec. 40 as amended provides a variety of issue wording to suit various pre-existing situations in the area involved.

In accordance with the above, it is the opinion of this office that the answer to your first question is that the election should not be called upon this Petition in that same was not a proper Petition under the amended act and would not be a basis for a legal election. The answer to your second question is; the Court should not submit the same as is; and the answer to your third question is; that the Court should call for a new petition with the issues stated in the language which the amended act requires the Commissioners Court to use in ordering the election.

Yours very truly,

JOHN BEN SHEPPERD  
Attorney General of Texas

By: s/ Horace Wimberly  
Horace Wimberly  
Assistant.

HW:rt:egw